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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In re

Petitions, Applications and
Related Pleadings Regarding the
Prime Time Access Rule,
Section 73.658(k) of the
Commission's Rules

MMB File No. 900418A
MMB File No. 870622A
MMB File No. 920117A

To: The Commission

COMMENTS OF NATIONAL BROADCASTING COMPANY, INC.

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SUMMARY

The time to reevaluate and modify the Prime Time Access Rule is long overdue. Fundamental and far-reaching changes have occurred in the television marketplace that have eliminated the original justifications for the Rule, which were based on a perception of "network dominance" and the paucity distribution outlets available to program suppliers. In the quarter century since the Rule was adopted, there has been a virtual explosion of video outlets. With the advent of cable, new broadcast networks, home video and DBS, the networks clearly no longer "dominate" the television landscape.

Moreover, PTAR has not achieved its principal goals: the development of diverse sources of programming for prime time and increased licensee programming choice. According to an NBC analysis, King World, Viacom/Paramount and Fox were the source of 93% of the programs acquired for and broadcast during the Access Period in the Top 50 markets. These three companies, and the three or four programs they distribute, "dominate" the first hour of prime time to the same extent as NBC, ABC and CBS and their program offerings "dominated" the daypart in 1970. In addition, the Rule places undue restrictions on station choice by preventing affiliates from freely acquiring programs that are available in the syndication marketplace. Providing Top 50 affiliates with the freedom to choose from among a greater diversity of competing syndicated programs would, in turn, lead to more diversity of

program source and type during the Access period.

Since it is clear that the original justifications for PTAR are no longer valid and that the Rule has failed to achieve its policy objectives, the Commission is obligated to determine whether there is any basis for continued regulation. NBC believes that there may be some continued justification for limiting to three hours the amount of prime time programming a Top 50 market affiliate can accept from its network pursuant to its affiliation agreement. However, all other restrictions on how these stations can program the remaining hour of prime time should be eliminated, including the prohibitions against off-network programs and first-run programs produced by a network. All program suppliers should be able to compete in the marketplace to provide stations with programming for the fourth hour of prime time. Stations, in turn, should be completely free to purchase programming from any seller.

NBC submits that with this modification, PTAR will truly foster its original goals of program diversity and licensee programming choice. We urge the Commission promptly to commence a rulemaking to review PTAR and to propose the modifications suggested in these Comments.

NBC also urges the Commission not to apply the timetable established for review of the financial interest and syndication

rules, which will not begin for almost a year, to the proceeding on PTAR. The television marketplace is changing with lightening speed. While regulatory change at a leisurely pace may have been acceptable in less revolutionary times, it cannot be countenanced in today's fast-changing world. Outdated restrictions such as PTAR place an enormous burden on the parties they affect, advantaging some competitors over others. The Commission should immediately commence a separate proceeding to determine whether there are any remaining policy grounds for PTAR regulation.

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To: The Commission

COMMENTS OF NATIONAL BROADCASTING COMPANY, INC.

National Broadcasting Company, Inc. (NBC) files these Comments in response to the Public Notice dated April 12, 1994, which seeks comment on three requests challenging the Prime Time Access Rule (PTAR). The Commission also has before it (1) a request by The Walt Disney Company to delete the off-network prohibition of PTAR filed in response to the October 24, 1990 petition of Columbia Pictures Television, Inc. for a declaratory ruling or waiver of the Rule; (2) A similar request on the off-network ban filed by CBS Inc. in Comments dated November 21, 1991 in the Commission's Video Marketplace Inquiry (MM Docket No. 91-221); and (3) Reply Comments filed by NBC in the Video Marketplace Inquiry supporting CBS's request and further urging the Commission to rescind a recent "clarification" of PTAR which for the first time included first-run programming produced by a network-owned entity within the scope of the Rule. While these filings seek somewhat differing relief on differing grounds, all point to the inescapable conclusion that the

time to reevaluate and modify PTAR is long overdue.

I. SUMMARY OF POSITION

The Commission is obligated to reexamine its rules and policies in light of competitive and marketplace changes that affect the industries it regulates.¹ Moreover, Commission regulations must address some real problem or marketplace failure and must be rationally designed to achieve some public interest objective.² PTAR does neither.

First, fundamental and far-reaching marketplace and competitive changes have occurred since PTAR was adopted. The Rule, which was adopted in 1970 in conjunction with the financial interest and syndication (fin/syn) rules, was designed to reduce what at the time was perceived to be "network dominance" of a marketplace in which there were limited video outlets and limited sources of programming. It was supposed to foster the development of independent sources of prime time programming by giving affiliated stations in the Top 50 markets "more than a nominal choice in selecting the programs which they present to the

¹ Geller v. FCC, 610 F.2d 973, 980 (D.C. Cir. 1979); In re Amendment of the Commission's Rules Relating to Multiple Ownership, 100 FCC2d 17 (1984).

² HBO v. FCC, 567 F.2d 9, 36 (D.C. Cir. 1977); National Assn of Ind. Television Producers and Distributors v. FCC, 502 F.2d 249, 257 (2nd Cir. 1974).

television audiences in their communities."³ Nearly 25 years later, the principal impetus for PTAR -- "network dominance" and scarce broadcast outlets and program sources -- has disappeared. There is no longer a marketplace predicate for PTAR.⁴

Second, the Rule has not achieved its principal goals: the development of diverse sources of programming for prime time and increased licensee programming choice. Instead PTAR has worked to reduce diversity and station choice in the Top 50 markets, contrary to its stated purpose.

In this situation, a prompt review of the continued efficacy of PTAR is clearly required. In view of profound marketplace changes and 25 years of experience under the Rule, the Commission must determine whether there is any public interest basis for continued regulation, or whether substantial changes in the Rule are necessary. Diversity and individual licensee program choice remain valid policy objectives. But as currently constructed and

³ In re Amendment of Part 73 of the Commission's Rules and Regulations with Respect to Competition and Responsibility in Network Television Broadcasting, 23 FCC2d 382, 385-87 (1970) (PTAR I).

⁴ Indeed, the Commission has explicitly found there is no longer a marketplace basis for the companion fin/syn restrictions, stating "the market is presently structured to function competitively in the absence of the rules." In the Matter of Evaluation of the Syndication and Financial Interest Rules, Second Report and Order, 8 FCC Rcd 3282, n. 27 (1993) (Fin/Syn Second Report and Order).

enforced, PTAR simply doesn't make sense as a way to achieve those goals.

The Rule focuses myopically on a "network" vs. "non-network" dichotomy as the basis for achieving diversity. The result has been an Access period that is singularly homogeneous. PTAR purports to increase diversity by "free[ing] a portion of valuable prime time in which licensees of individual stations present programs in light of their own judgments as to what would be most responsive to the needs, interests and tastes of their communities."⁵ But the Rule goes too far in limiting the types of programs Top 50 affiliates can choose. It in fact prevents stations from exercising precisely the judgments that are at the core of licensee decision-making and programming discretion. Station choice continues to be severely restricted by PTAR, and, as a result, the source and programming diversity the Commission hoped for has not materialized.

NBC submits that the only way the remaining valid policy objectives of PTAR will be realized is if the Rule is modified to allow affiliates in the Top 50 markets the true freedom to acquire programming in the open marketplace from any source whatsoever other than from a network under the terms of the station's network

⁵ Second Report and Order in PTAR, 50 FCC2d 829, 835 (1975) (PTAR II).

affiliation agreement.⁶ In the highly competitive marketplace of the 1990's, affiliates in major markets should not be prohibited by the government from acquiring those programs that they believe will best serve and be most appealing to their communities. Thus, neither off-network programs nor first-run programs produced by a network-owned production entity should be subject to PTAR restrictions.

II. THE ORIGINAL JUSTIFICATIONS FOR PTAR ARE NO LONGER RELEVANT IN LIGHT OF DRAMATIC CHANGES IN THE MARKETPLACE

In 1970, the FCC was "propelled" to adopt PTAR on the basis of several "compelling facts:"⁷

- There were only three national television networks
- There were 621 television stations on the air, of which 122 were independents. Only 14 independent VHF stations were located in the Top 50 markets
- During prime time, control over programming was

⁶ NBC does not challenge PTAR to the extent it limits prime time network programming, distributed pursuant to a network/station affiliation agreement, to three hours.

⁷ PTAR I, 23 FCC2d at 385-87.

"heavily concentrated in three hands"

- Non-network programming was increasingly comprised of off-network shows; high cost syndicated prime time programming had "virtually disappeared"
- Because they were so few in number, independent stations alone were not adequate to support a healthy syndication industry composed of independent producers of "prime time quality programs."

Based on this marketplace analysis, the Commission concluded an "unhealthy situation" existed that required "limitation on network control and an increase in the opportunity for the development of independent sources of prime time programming."⁸ The Commission's response was PTAR, which prohibits Top 50 affiliates from broadcasting more than three hours of "network programming" in prime time.⁹ The Commission believed this restriction would (1) reduce "network dominance" and (2) carve out

⁸ Id. at 394.

⁹ In 1970, the Commission included off-network programming in the definition of "network programming. But it was not until 1991 that it explicitly included first-run programs produced by a network-owned entity within the prohibitions of PTAR. In the Matter of Evaluation of the Syndication and Financial Interest Rules, 6 FCC Rcd 3094, 3146 (1991).

a protected high audience time period during which stations would be forced to broadcast programs from non-network sources. The Commission's hope was that diversity of program sources and types would result.

None of the factual predicates for PTAR with respect to "network dominance" exists today. As the Commission has noted in numerous other proceedings, the video marketplace has changed dramatically since 1970. In particular, the Commission has recognized that a vast number of new viewing options have emerged that represent "not only a source of diversity for viewers, but an additional market opportunity for program producers."¹⁰

1. Today there are four national broadcast networks, not "only three." The FOX Network reaches 97% of all television households and successfully competes against the three original networks for audience, advertising, programming and affiliated stations.¹¹ Two additional broadcast networks will be launched

¹⁰ Fin/Syn Second Report and Order, 8 FCC Rcd at 3304 et seq. Unless specifically indicated otherwise, the Commission's decision in the Fin/Syn Second Report and Order is the source of the industry data that follow.

¹¹ According to its filings in the fin/syn proceeding, FOX spent over \$400 Million on entertainment programming in 1993. It has recently outbid CBS for the rights to the NFL National Football Conference, and twelve VHF stations affiliated with CBS, ABC and NBC have recently announced an agreement to switch their affiliations to FOX. The New York Times, Business Section, May 30, 1994.

by major Hollywood studio/syndicators, Warner Brothers and Viacom/Paramount, in early 1995.

2. The number of full power commercial stations has more than doubled since 1970. In addition, there are over 1500 commercial low power stations on the air.¹² The number of independent stations has more than tripled from 122 when PTAR was adopted to over 380 today. It is the growth in independent stations that has made the launch of the FOX, Warner and Paramount Networks possible. Network affiliations for these stations strengthen them financially, making possible the purchase of more popular syndicated programs and the production of local programs, such as news and public affairs.

3. In addition to the enormous growth in broadcast outlets, new media such as cable, home video and satellite-delivered programming services have vastly increased viewer choice. By 1993, 67% of U.S. TV households subscribed to cable.¹³ There were at least 100 existing national and regional cable programming services, and another 125 announced services are waiting to be launched.¹⁴ In 1993, the cable industry spent \$3 Billion on

¹² FCC News Release, Broadcast Station Totals as of March 31, 1994.

¹³ Nielsen Home Video Index.

¹⁴ Communications Daily, May 18, 1994, p. 2.

programming -- \$1.8 Billion for original production. Over 80% of American households have a VCR, and 4.3 Million of them own a backyard dish capable of receiving one of several existing satellite-delivered programming services.

As a result of these many new outlets, more than half of U.S. homes can now receive 10 over-the-air stations and, when cable services are included, the average home can receive over 30 different channels. The number of video outlets is destined to continue to increase as technologies such as DBS succeed in the marketplace, and as fiber optics and digital technology provide consumers with literally hundreds of channels of new programming and other services.

4. Due to competition from these many outlets and programming sources, the three original networks no longer "control" prime time. In 1970 when PTAR was adopted, the three networks' received the overwhelming preponderance of the prime time audience, with about a 90 share of viewing. By 1993 their share had dropped to a 58, representing only 52% of the viewing audience.¹⁵ In contrast, the combined prime time viewing shares of cable networks,

¹⁵ Nielsen Television Index. In prime time, when many multi-set homes are tuned to two programs at the same time, there are more than 100 share points. Thus, to determine the networks' percentage of the viewing audience, one must divide their share points by the total number of prime time share points (111 in 1993).

independent stations and the FOX Network nearly doubled in the decade between 1983 and 1993 from a 25 to a 49 share.¹⁶

The Commission has also acknowledged that the three networks do not control the marketplace for entertainment programs. A recent analysis which was cited by the Commission in the Fin/Syn Second Report and Order indicates that the three networks combined account for no more than 21% of the expenditures on entertainment programming, and their market share continues to decline. Competing buyers, such as the FOX Network, cable and first-run syndication, account for the vast majority of such expenditures.¹⁷

5. Non-network programming is no longer dominated by off-network shows. In addition to the opportunities for program producers created by new broadcast and cable networks, first-run syndication is today a vibrant and growing market for producers. There are over 135 original programs being offered in first-run syndication. More importantly, first-run programs are more watched than off-network shows: 70% of the viewing of syndicated programs is of first-run programs, while off-network captures only 30%.¹⁸ Most significant in terms of the purpose of the PTAR, several

¹⁶ Ibid.

¹⁷ Fin/Syn Second Report and Order, 8 FCC Rcd at 3304.

¹⁸ Paul Kagan Associates, TV Program Stats, January 31, 1994, p. 2.

"prime time quality" syndicated programs have been successfully launched, including "Star Trek: The Next Generation," "Kung Fu," "The Untouchables" and "Deep Space Nine."¹⁹

Thus, the facts that prompted the Commission to adopt PTAR no longer characterize the TV marketplace. As the Commission's Office of Plans and Policy recently noted, "the power of the networks that the Commission has historically sought to curb has succumbed to technology and competition."²⁰ And as the Commission itself has acknowledged, networks no longer "dominate" and their competitive position continues to erode.²¹ Independent program producers have a number of different video outlets competing for their creative output. The non-network program marketplace is vibrant and growing. Most importantly, both stations and viewers enjoy abundant program choices.

¹⁹ The success of these programs cannot be attributed to PTAR. According to NBC's analysis of Top 50 affiliates' Access programming during the February, 1994 Sweeps Period, only one market affected by the Rule (Miami) carried one of these "prime time quality" first-run hour dramas. It is therefore obvious that the success of these shows is attributable to the strength and number of independent stations that clear the programs across the country.

²⁰ Broadcast Television in a Multichannel Marketplace, OPP Working Paper Series, June, 1991, p. 169.

²¹ Fin/Syn Second Report and Order, 8 FCC Rcd at 3304.

II. PTAR HAS FAILED TO ACHIEVE ITS STATED GOALS

As we have demonstrated above, the goal of reducing "network dominance" has been achieved not by the operation of PTAR, but by marketplace changes including the growth of independent stations and cable, the launch of new broadcast networks and ongoing technological change. "Network dominance" can no longer be cited as a rationale for the Rule. As for achieving the objectives of PTAR -- fostering diversity of program sources and licensee program choice -- the Commission's regulatory approach was either misguided at the outset, or has failed, or both.

When the Rule was adopted, FCC Chairman Burch's dissenting opinion argued that because of the fundamental economics of the television production business, PTAR could achieve neither the goal of a healthy independent production business nor the goal of increased program diversity.²² When PTAR was finalized in 1975, Commissioner Robinson reached the same conclusion in his dissent.²³ Commissioner Robinson pointed out that the chief cause of "network dominance" was the efficiency of the then unique network distribution system, which gave the networks the ability

²² Dissent of Chairman Burch, PTAR I, 23 FCC2d at 411.

²³ Dissent of Commissioner Robinson, PTAR II, 50 FCC 2d at 889. The same conclusion was also reached in 1980 by the Commission's Network Inquiry Special Staff, which recommended repeal of the Rule. Network Inquiry Special Staff Report, Vol. I, pp. 510-511.

efficiently to broker programs on a national basis. He then noted:

As time passes, it may be possible for program brokers to develop for just the access period. If this were to happen, however, we would be no closer to the goals which the majority hopes to attain...Since market forces would distill no more than three such brokers from the set of current program distributors, the best that can be realistically hoped for is the development of a new triopoly, which would "dominate" the access period.²⁴

History has proven Chairman Burch correct and Commissioner Robinson prescient. For regardless of whether the Rule as adopted could ever have achieved the Commission's policy goals, it is clear, after 25 years of experience, it has not done so.

While it is true that by prohibiting the three original networks from programming an hour of prime time, the Rule has forced affiliates in the Top 50 markets to obtain programs from other sources, the practical result has not been the boon to either independent producers or diversity the Commission envisioned. Instead, as predicted by Commissioner Robinson, the Access period on these stations is dominated today by a new "triopoly." The leader of the triopoly is King World, which currently controls

²⁴ Id. at 894.

almost 22% of the first-run marketplace.²⁵ The other two members are Viacom/Paramount and Fox, major Hollywood studios who not only supply many prime time programs to NBC, CBS and ABC, but who have or are about to have competing broadcast networks of their own.

According to NBC's analysis, King World, Paramount and Fox were the source of 93% of the programs acquired for and broadcast in the Access period by affiliates in the Top 50 markets during February, 1994. Besides this complete lack of program source diversity, the Access period on Top 50 affiliates is largely populated by the same few programs: 58 stations run King World's "Wheel of Fortune," 44 stations run Paramount's "Entertainment Tonight," 35 stations run King World's "Jeopardy" and 25 stations run Fox's "Current Affair." Thus, three companies, and the three or four programs they distribute, "dominate" the first hour of prime time to the same extent as NBC, ABC and CBS and their program offerings "dominated" the daypart in 1970.

This situation is due, in part, to the economics of the business and the marketplace forces to which Commissioners Burch and Robinson alluded. But the real reason PTAR has failed is because the way the Commission has approached diversity and station programming choice under the Rule is counterproductive to those

²⁵ Paul Kagan Associates, TV Program Stats, April 30, 1994, p.4.

objectives. As NBC will argue below, these objectives can only be achieved if the Commission restores to stations the true unrestricted freedom to acquire programs in the marketplace for the fourth hour of prime time, and gives all program suppliers the ability to compete in that marketplace.

III. THE COMMISSION'S POLICY GOALS WILL BE ACHIEVED IF PTAR IS MODIFIED TO ALLOW TOP 50 AFFILIATES TO ACQUIRE PROGRAMS FROM ANY SOURCE, OTHER THAN PURSUANT TO A NETWORK AFFILIATION AGREEMENT, FOR THE ACCESS PERIOD

Since it is abundantly clear that the original justifications for PTAR are no longer valid, and that the Rule has failed to achieve its policy objectives, the Commission is obligated to determine whether there is any basis for continued regulation. NBC's position is that while there may be some continued justification for limiting to three hours the amount of prime time programming a Top 50 market affiliate can accept from its network pursuant to a network affiliation agreement, all other restrictions on how the station can program the remaining hour of prime time should be eliminated. Thus all program suppliers, including distributors of off-network programs and network producers of first-run programs, should be able to compete in the marketplace to provide Top 50 affiliates with programming for the fourth hour of prime time. These stations, in turn, should be completely free to purchase any type of programming from any competing seller. With this modification, PTAR will truly foster -- to the extent possible

given marketplace realities and dynamics -- its original goals of program diversity and licensee programming choice.

The Commission's current concept of "source diversity" under PTAR is both overly narrow and out of step with its approach to this policy objective in other areas. In 1970, the Commission drew a simplistic distinction between "network" and "non-network" programming, and then determined that any program that was not and never had been part of a network's schedule was automatically "diverse." But with the demise of "network dominance," and with today's wide recognition that the real "source" of programming is the producer, source diversity should logically be a function of who produces and owns a program, not its initial distributor. The Commission adopted this approach in the context of the fin/syn rules, where it stated that "focusing on the legal owner of the program is consistent with the Commission's historic approach to diversity..."²⁶

PTAR takes a different and illogical approach -- it forbids Top 50 market affiliates from acquiring any program for the Access period, regardless of its producer/owner, if it ever appeared on a

²⁶ Fin/Syn Second Report and Order, 8 FCC Rcd at n. 66. Thus, in the most recent phase of the fin/syn proceeding, the Commission determined that the production community had become less diverse under the fin/syn regime because the number of copyright owners of programming had steadily declined since the adoption of the rules in 1970. Id. at 3310.

network. But the objective of diversity is hardly advanced because a station runs Paramount's "Entertainment Tonight" (a first-run program) instead of Paramount's "Cheers" (an off-network program) during Access. Since Paramount produces both shows, how has source diversity been enhanced? In terms of the Commission's policy objective, it should not matter that "Cheers" was exhibited on a network before it was distributed in syndication. Both shows come from the same production source.

By focusing on the network/non-network dichotomy, PTAR prevents local stations from choosing programming from a greater diversity of production sources that are available in the marketplace. Thus PTAR undermines its primary goal: to give stations as many competing sources of programming as the marketplace would bear. If station choice was restored, and Top 50 affiliates were given truly unrestricted freedom to choose from among the programs competing in the syndication marketplace, source diversity would inevitably increase.

For example, if the off-network prohibition was eliminated, as has been requested in several of the filings being considered by the Commission, the producers of off-network programs, including major studios such as MCA and independent producers such as Carsey/Werner and Shukovsky/English, would be able to compete against King World, Viacom/Paramount and Fox, the three companies

that currently dominate the Access period. Although network production is highly concentrated, with five major studios supplying most of the networks' entertainment programming along with a handful of independent producers, it is still more diverse than the segment of the production community represented in the Access period, where only three companies supply 93% of the programs licensed. Allowing Top 50 stations to acquire off-network programs for Access would certainly double and perhaps triple the number of program sources represented during this fourth hour of prime time.

Similarly, Top 50 affiliates should be able to take advantage of the increased competition that would result if the first-run in-house productions of NBC, ABC and CBS could compete for exhibition during the Access period. The objectives of source diversity and competition are currently thwarted by the Commission's "clarification" of PTAR, which treats network-produced first-run programming the same as programming offered by a network as part of its regular service to affiliates. This "clarification" prevents three additional producers -- the original networks -- from competing against the three companies that now control Access with new first-run program productions. Allowing network first-run productions to compete in Access alone could double the sources of programming available for the fourth hour of prime time.

There is no basis for concern that network first-run productions would have some unfair marketplace advantage because of the network-affiliate relationship.²⁷ Network-produced first-run programs must be sold market-by-market just like all other first-run shows; network producers would be one of several competitors seeking clearance for their syndicated programs in Access. Most Top 50 affiliates are owned by large Group Owners such as Group W/Westinghouse, Gannett, Scripps-Howard, Hearst, Post-Newsweek and Great American. These powerful companies could not be forced by a network to buy a first-run program they don't want. Moreover, these companies typically own stations affiliated with two or even all three of the original networks. They are unlikely to agree to acquire a first-run program just because it is offered by one of the networks with which some but not all of their stations are affiliated.

Rather, the only logical scenario is that affiliates in the Top 50 markets will make purchasing decisions based on a judgment that a particular program will best serve their local communities.

²⁷ Over a decade ago, the Commission's Network Inquiry Staff found that the three networks had no particular power over their affiliated stations. Network Inquiry Staff Report, Vol II., pp. 287-292. In the 1990's, regulation cannot be justifiably predicated on assumptions about network "power" or "control" over affiliates. As the FOX/New World affiliate switches graphically illustrate, with multiple network and first-run program sources competing for national distribution, it is the affiliated stations that today have the leverage in the network/affiliate relationship.

In that competitive contest, network-produced first-run programming stands in no better position than any other programming available in the marketplace.

In summary, since "network dominance" is no longer a concern, the Commission should restore Top 50 market affiliates' freedom to acquire any program available in the marketplace (other than under the terms of a network affiliation agreement), including both off-network shows and first-run shows regardless of who produces them. Giving stations unfettered discretion to make program selections according to the needs and interests of local communities will go a long way toward achieving the remaining valid policy goals of PTAR.

IV. PTAR REDUCES COMPETITION IN THE SYNDICATION MARKETPLACE

An implicit goal of PTAR was to enhance competition in the television marketplace by fostering independent sources of programming that would compete against the established networks. As discussed above, new video outlets and program sources have proliferated in spite of, not because of PTAR. PTAR, in fact, lessens competition among local stations, among network purchasers of entertainment programming and within the syndication market. These adverse effects on competition present additional reasons why the Rule must be reexamined and modified.

The various filings the Commission has received on PTAR²⁸ discuss at length the various ways in which the Rule impairs competition. NBC refers the Commission to these filings for a more detailed discussion of the points that follow:

1. PTAR places Top 50 affiliates of NBC, ABC and CBS at a competitive disadvantage relative to affiliates of the FOX, Paramount and Warner networks, to independent stations and to cable networks. These competing video outlets can freely purchase programming in the marketplace and exhibit it at any time of day, limited only by their own business and public interest judgments.

2. The Rule lessens competition in the marketplace for attractive programs. Since Top 50 affiliates cannot acquire off-network or network-produced first-run programs for the Access period, the number of competitors is artificially limited, and the price of Access programs is artificially depressed through reduced competition.

3. The three original networks are at a competitive disadvantage relative to FOX and the other "emerging networks" because a once a program appears on NBC, ABC or CBS, it cannot be

²⁸ These filings include the petitions on which the Commission is seeking comment in this proceeding, and the Disney, CBS and NBC filings listed on page 1 of these Comments.